

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AARON MOSES COBBS, III,

Movant,

File No. 1:08-CV-471

v.

HON. ROBERT HOLMES BELL

UNITED STATES OF AMERICA,

Respondent.

ORDER

This matter is before the Court on the Respondent's request for an order for Movant's trial counsel to provide an affidavit. (Dkt. No. 7.) Movant Aaron Moses Cobbs, III, filed a motion pursuant to 28 U.S.C. § 2255 alleging, among other things, ineffective assistance of his trial counsel, attorney Jeffrey Slocombe. On September 12, 2008, Respondent filed a motion requesting additional time to respond because it sought to obtain an affidavit from Mr. Slocombe regarding Movant's allegations. (Dkt. No. 5.) The Court granted Respondent's request. (Dkt. No. 6.) Respondent asserts that it has been unable to obtain an affidavit from Mr. Slocombe addressing the allegations made in Movant's motion regarding ineffective assistance of counsel, and Respondent seeks an order from the Court requiring Mr. Slocombe to provide such an affidavit.

The Court agrees with Respondent that by filing a § 2255 motion asserting ineffective assistance of counsel, Petitioner has implicitly waived the attorney-client privilege, though only to the extent necessary to litigate his ineffective assistance of counsel claim. *In re Lott*, 424 F.3d 446, 453 (6th Cir. 2005). Nevertheless, Respondent has not cited any authority that supports ordering

Mr. Slocombe to prepare and file an affidavit and the Court has not found any authority to support such an order. Accordingly,

IT IS HEREBY ORDERED that Respondent's request for an order requiring counsel to provide an affidavit (Dkt. No. 7) is **DENIED**.

Dated: October 1, 2008

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE